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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MOLLY BROWN, PARSA MILLER, and
LAUREN MORGAN as individuals, on
behalf of themselves, the general public and
those similarly situated,

Plaintiffs,

v.

NATURE'S PATH FOODS, INC.,

Defendant.

CASE NO.

**CLASS ACTION COMPLAINT FOR VIO-
LATION OF THE CALIFORNIA CON-
SUMERS LEGAL REMEDIES ACT;
FALSE ADVERTISING; FRAUD, DECEIT,
AND/OR MISREPRESENTATION; UN-
FAIR BUSINESS PRACTICES; AND UN-
JUST ENRICHMENT**

JURY TRIAL DEMANDED

INTRODUCTION

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2 1. Plaintiffs Molly Brown, Parsa Miller, and Lauren Morgan, by and through their
3 counsel, bring this class action against Defendant Nature's Path Foods, Inc. to seek redress for
4 Defendant's deceptive practices in labeling and marketing its Nature's Path products.

5 2. Consumers are increasingly health conscious and, as a result, many consumers
6 seek foods high in protein. To capitalize on this trend, Defendant prominently labels its Nature's
7 Path products as providing specific amounts of protein per serving depending on the product,
8 such as "**10g PROTEIN**" on the label of its Hemp Hearts Granola. Consumers, in turn,
9 reasonably expect that each product will provide the actual amount of protein per serving that the
10 front of the product package claims it will.

11 3. In truth, however, Defendant's products do not deliver the amount of protein that
12 the labels claim. For example, Defendant labels its Hemp Hearts Granola as providing "10g
13 PROTEIN," but amino acid content testing establishes that Defendant's Hemp Hearts Granola, at
14 best, has 7.87 grams of protein.

15 4. To compound the deception, below, in a small font that is barely legible to
16 consumers, the Hemp Hearts Granola packaging provides that the "10g PROTEIN" is "per serving
17 with milk."¹ The Nutrition Facts panel for the Hemp Hearts Granola includes the grams of protein
18 for the product with milk, which is represented to be 10 grams of protein, and without milk,
19 which is represented to be 6 grams of protein. Based on amino acid content testing, Defendant's
20 products contain less protein than claimed, meaning, for example, rather than having 6 grams of
21 protein per serving without milk, Defendant's Hemp Hearts Granola product actually has only
22 3.87 grams (i.e., an overstatement by approximately 57%). The Nutrition Facts panel also makes
23 clear that the addition of milk introduces an extra 4 grams of protein. Because the Hemp Hearts
24 Granola only has 3.87 grams of protein, Defendant's representation on the front of the Hemp
25 Hearts Granola that the product has "10g PROTEIN" overstates the amount of protein the
26 product, even factoring in the additional protein that comes with adding milk to it, which would

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28 ¹ Not all of Defendant's Products include, on the front label, an amount of protein that is inclusive
of milk. Most of Defendant's Products, in fact, do not.

1 amount to a total of 7.87 grams of protein.

2 5. Further, Defendant uses proteins of low biological value to humans in its products,
3 such as oats. Accordingly, when the amino acid content is adjusted for protein digestibility (the
4 “Protein Digestibility Corrected Amino Acid” score, or “PDCAAS”), Defendant’s products
5 provide even less protein per serving than amino acid content testing alone reveals. Oats typically
6 have PDCAAS scores of between 0.5 and 0.6.

7 6. Defendant’s products are also misbranded. Parallel state and federal regulations
8 require any product that makes a protein claim to include in the nutrition facts panel the
9 percentage of the daily value of the protein in the product based on its amino acid content and
10 PDCAAS. Defendant’s products prominently make protein content claims but they fail to provide
11 the required percent daily value of protein in the nutrition facts panel.

12 7. Defendant’s misrepresentations and misbranding caused Plaintiffs and members of
13 the class to pay a price premium for the products.

14 **PARTIES**

15 8. Molly Brown is, and at all times alleged in this Class Action Complaint was, an
16 individual and a resident of Novato, California.

17 9. Parsa Miller is, and at all times alleged in this Class Action Complaint was, an
18 individual and a resident of Loomis, California.

19 10. Lauren Morgan is, and at all times alleged in this Class Action Complaint was, an
20 individual and a resident of Huntington Beach, California.

21 11. Molly Brown, Parsa Miller, and Lauren Morgan are collectively referred to
22 hereafter as “Plaintiffs.”

23 12. Defendant Nature’s Path Foods, Inc. (“Defendant”) is a corporation existing under
24 the laws of Canada with its principal place of business in Richmond, British Colombia, Canada,
25 and is registered to do business in California.

26 **JURISDICTION AND VENUE**

27 13. This Court has jurisdiction over the subject matter of this action pursuant to 28
28 U.S.C. § 1332(d)(2). The aggregate amount in controversy exceeds \$5,000,000, exclusive of

1 interest and costs; and Plaintiffs and Defendant are citizens of different states.

2 14. The injuries, damages and/or harm upon which this action is based, occurred or
3 arose out of activities engaged in by Defendant within, affecting, and emanating from, the State
4 of California. Defendant regularly conducts and/or solicits business in, engages in other persistent
5 courses of conduct in, and/or derives substantial revenue from products provided to persons in the
6 State of California. Defendant has engaged, and continues to engage, in substantial and
7 continuous business practices in the State of California.

8 15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a
9 substantial part of the events or omissions giving rise to the claims occurred in the state of
10 California, including within this District.

11 16. In accordance with California Civil Code Section 1780(d), Plaintiff Molly Brown
12 concurrently files herewith a declaration establishing that, at various times throughout the class
13 period, she purchased Nature's Path Hemp Hearts Granola, Gorilla Munch Cereal (23 oz),
14 Pumpkin Seed + Flax Granola in grocery stores in Novato, Petaluma and San Rafael, California.
15 (Plaintiff Molly Brown's declaration is attached hereto as Exhibit A.)

16 17. Plaintiffs accordingly allege that jurisdiction and venue are proper in this Court.

17 **SUBSTANTIVE ALLEGATIONS**

18 18. Defendant manufactures, distributes, markets, advertises, and sells a variety of
19 breakfast and snack products in the United States under the brand name "Nature's Path." Many of
20 these products have packaging that predominately, uniformly, and consistently states on the prin-
21 cipal display panel of the product labels that they contain and provide a certain amount of protein
22 per serving. Plaintiffs have attached, as Exhibit B, a non-exhaustive list of the Nature's Path
23 products that make protein claims on the front of the product packages. The products listed in Ex-
24 hibit B, and any other Nature's Path brand product that claims a specific amount of protein on the
25 front of its label, will hereinafter be referred to as the "Products."

26 19. The representation that the Products contain and provide a specific amount of pro-
27 tein per serving was uniformly communicated to Plaintiffs and every other person who purchased
28 any of the Products in California and the United States. The same or substantially similar product

label has appeared on each Product during the entirety of the Class Period in the general form of the following example:



20. The nutrition facts panel on the side of the Products likewise repeats the protein content claims, although the Products fail to provide any referenced percent daily value of its protein content as state and federal regulations require. The side panel of the Products has appeared consistently throughout the Class Period in the general form of the following example (from the Hemp Hearts Granola):

Nutrition Facts					
About 6 servings per container					
Serving size 3/4 cup cereal (55g)					
	Per 3/4 cup cereal		Per 3/4 cup cereal with 1/2 cup skim milk		
Calories	260		300		
	% DV*		% DV*		
Total Fat	10g	13%	10g	13%	
Saturated Fat	1.5g	8%	1.5g	8%	
Trans Fat	0g		0g		
Polyunsaturated Fat	6g		6g		
Monounsaturated Fat	2.5g		2.5g		
Cholesterol	0mg	0%	0mg	0%	
Sodium	45mg	2%	95mg	4%	
Total Carb.	36g	13%	42g	15%	
Dietary Fiber	5g	18%	5g	18%	
Total Sugars	10g		16g		

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7 21. As described in detail below, Defendant's advertising and labeling of the Products
8 as containing and providing specific amounts of protein per serving is false, misleading, and in-
9 tended to induce consumers to purchase the Products at a premium price, while ultimately failing
10 to meet consumer expectations. These representations deceive and mislead reasonable consumers
11 into believing that a serving of the Products will provide the grams of protein as represented on
12 the label, when in fact, protein content testing for the Nature's Path Hemp Hearts Granola, for
13 example, revealed that a serving contains only 3.87 grams of protein – an overstatement by ap-
14 proximately 57%. Even factoring in the addition of milk, which most of Defendant's Products do
15 not include on the front label panel, Defendant overstates that available protein per serving by
16 approximately 28%.) Further, when correcting for the digestibility (and therefore bio-usability) of
17 the protein through PDCAAS, the amount provided will be even less.

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Consumer Demand for Protein

22. Many American consumers are health conscious and seek wholesome, natural foods to keep a healthy diet, so they routinely rely upon nutrition information when selecting and purchasing food items. This is especially true in the community of athletes, registered dietitians, and coaches, to which Defendant markets. As noted by FDA Commissioner Margaret Hamburg during an October 2009 media briefing, “[s]tudies show that consumers trust and believe the nutrition facts information and that many consumers use it to help them build a healthy diet.” Indeed, the FDA recommends relying on Nutrition Facts Labels as the primary tool to monitor the consumption of protein.²

23. Protein is found throughout the body—in muscle, bone, skin, hair, and virtually every other body part or tissue. The health benefits of protein are well studied and wide ranging. Scientific studies have confirmed that protein can assist in weight loss, reduce blood pressure, reduce cholesterol, and control for risk factors for cardiovascular diseases. The National Academy of Medicine recommends that adults get a minimum of .8 grams of protein for every kilogram of body weight per day, or just over 7 grams for every 20 pounds of body weight.³ For a 140-pound person, that means about 50 grams of protein each day. For a 200-pound person, that means about 70 grams of protein each day.

24. Athletes and fitness enthusiasts typically consume much higher amounts of protein each day; typically between 1 to 1.5 grams of protein for every pound of body weight.

25. The health benefits of protein are just as important, if not more important, for children. Children are in a relative state of constant growth and rely on protein as the building block of muscle, bone, skin, hair, and virtually every other body part or tissue. The National Academies of Science recommends the following amounts of daily intake of protein based on age group: 1-3

² FDA Protein Fact Sheet,

<https://www.accessdata.fda.gov/scripts/InteractiveNutritionFactsLabel/factsheets/Protein.pdf>

³ National Academies of Medicine. *Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids (Macronutrients)*.

1 years old: 13 g of protein per day; 4-8 years old: 19 g of protein per day; 9-13 years old: 34 g of
2 protein per day.⁴

3 26. Protein is not a monolithic substance, but instead proteins come in many varieties.
4 Proteins are essentially chains of different amino acids, and different types of amino acids
5 chained together in different ways will make different types of proteins. Further, the makeup of
6 the protein that is ingested changes the function of the protein in the body, and certain types of
7 proteins are more easily digested and used by humans than others.

8 27. Typically, a “complete protein” is a protein that contains all nine essential amino
9 acids. An essential amino acid is one that the human body cannot produce on its own and must be
10 obtained through diet. Essential amino acids may be measured by the Protein Digestibility Cor-
11 rected Amino Acid Score (“PDCAAS”), which FDA regulations require for the calculation of
12 Daily Reference Values (“DRV”). 21 C.F.R. § 101.9(c)(7)(ii); FDA Food Labeling Guide, p.29,
13 Question N. 22.

14 28. The PDCAAS method requires the manufacturer to determine the amount of es-
15 sential amino acids that the food contains and then multiply that number by humans’ ability to
16 digest the amino acid profile.

17 29. Defendant uses plant-based proteins in its products. Because of the differences in
18 benefits depending on the amino acid composition of a protein, the source of protein is important.
19 Whey protein is animal-based and contains all nine essential amino acids. It has a high biological
20 value and is fully digestible by humans. Thus, whey protein has a PDCAAS of 1.0. Plant protein
21 contains higher levels of antioxidants, but rarely contains all nine essential amino acids. Further,
22 plant proteins such as oat proteins, which Defendant uses in its Products according to their ingre-
23 dient lists, are not fully digested by humans. Oat proteins typically have a PDCAAS of .5-.6,
24 meaning only 50-60% of the protein from those sources will be digested and available to humans.

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28 ⁴ *Id.*

30. By combining proteins with a 1.0 PDCAAS, such as whey, with lower quality proteins such as oats that typically have .5 or .6 PDCAAS, the overall PDCAAS for the combination will be far lower than 1.0.

31. Accordingly, Defendant's use of low quality proteins, even in combination with some higher quality proteins, means that they actually provide far less protein to humans than its Product labels claim, or that amino acid content testing without correcting for digestibility shows.

Federal and State Regulations Governing Food Labeling

32. The Food and Drug Administration regulates nutrition content labeling. According to these regulations, "[a] statement of the corrected amount of protein per serving, as determined in paragraph (c)(7)(ii) of this section, calculated as a percentage of the RDI or DRV for protein, as appropriate, and expressed as a Percent of Daily Value . . . *shall be given if a protein claim is made for the product . . .*" 21 C.F.R. 101.9(c)(7)(i) (emphasis added).

33. Although FDA guidance provides that a declaration of the DRV for protein is "not mandatory" in typical circumstances, that same guidance is equally clear that "[t]he percent of the DRV is required if a protein claim is made for the product."⁵

34. Further, FDA regulations require the DRV to be calculated using amino acid analysis, more specifically the Protein Digestibility Corrected Amino Acid Score ("PDCAAS"). 21 C.F.R. § 101.9(c)(7)(ii); FDA Food Labeling Guide, p. 29, Question N.22. The PDCAAS method does not calculate protein content by nitrogen combustion, which is otherwise permitted under 21 C.F.R. § 101.9(c)(7) for products that do not make protein content claims.⁶

35. Accordingly, when a product makes a protein content claim, FDA regulations require manufacturers to calculate the amount of amino acids that the food contains and then multiply that amount by humans' ability to digest the amino acid profile (the PDCAAS) to come up with a percent daily value.

⁵ Guidance for Industry: A Food Labeling Guide ("FDA Food Labeling Guide") p. 29, Question N22, U.S. Food & Drug Administration, <https://www.fda.gov/media/81606/download> (last accessed February 18, 2020).

⁶ Specifically, the regulation states that the grams of protein figure in the nutrition fact box "may be calculated on the basis of the factor of 6.25 times the nitrogen content of the food."

36. FDA regulations also allow for a separate “as prepared” column in the Nutrition Facts panel for food “commonly combined with other ingredients” but the “type and quantity of the other ingredients to be added to the product” and “the specific method of cooking or other preparation” must be “specified prominently on the label.” 21 C.F.R. 101.9(h)(4). Should a manufacturer opt to include an “as prepared” column in the Nutrition Facts panel, it must also include the DRV in both the “as prepared” and “as purchased” columns. 21 C.F.R. 101.9(e)(3).

37. Identical federal and California laws regulate the content of labels on packaged food and require truthful, accurate information on the labels of packaged foods. The requirements of the federal Food, Drug & Cosmetic Act (“FDCA”), and its labeling regulations, including those set forth in 21 C.F.R. §§ 101, 102, were adopted by the California legislature in the Sherman Food Drug & Cosmetic Law (the “Sherman Law”). California Health & Safety Code § 110100 (“All food labeling regulations and any amendments to those regulations adopted pursuant to the federal act, in effect on January 1, 1993, or adopted on or after that date shall be the food labeling regulations of this state.”). The federal laws and regulations discussed below are applicable nationwide to all sales of packaged food products. Additionally, no state imposes different requirements on the labeling of packaged food for sale in the United States.

38. Under the FDCA, the term false has its usual meaning of “untruthful,” while the term misleading is a term of art that covers labels that are technically true, but are likely to deceive consumers. Under the FDCA, if any single representation on the labeling is false or misleading, the entire food is misbranded, and no other statement in the labeling can cure a misleading statement.

39. Further in addition to its blanket adoption of federal labeling requirements, California has also enacted a number of laws and regulations that adopt and incorporate specific enumerated federal food laws and regulations. *See* California Health & Safety Code § 110660 (misbranded if label is false and misleading); and California Health & Safety Code § 110705 (misbranded if words, statements and other information required by the Sherman Law are either missing or not sufficiently conspicuous).

40. Under California law, a food product that is “misbranded” cannot legally be manufactured, advertised, distributed, sold, or possessed. Misbranded products have no economic value and are legally worthless.

41. Representing that the Products contain a certain amount of protein per serving, as Defendant’s labels do, is a statement of fact, and use of these phrases on the labels of packaged food is limited by the aforementioned misbranding laws and regulations.

Defendant’s Marketing and Labeling of its Products Violates State and Federal Food Labeling Laws

42. Defendant’s Products are unlawful, misbranded, and violate the Sherman Law, California Health & Safety Code § 110660, *et seq.*, because the Products’ labels state that each Product contains and provides a specific amount of protein per serving—such as “10g PROTEIN” for the Hemp Hearts Granola—when, in fact, amino acid content testing reveals that the Products contain less – such as 3.87 grams of protein for the Hemp Hearts Granola, which even after adding an extra 4 grams of protein for milk, overstates the protein by approximately 28%.

43. Further, Defendant makes protein content claims on the front of its Product packages and yet has left the Percent Daily Value column of its nutrition facts (for both the “as prepared” and “as purchased” columns) for protein completely blank. Because Defendant made a protein content claim, it was statutorily obligated to calculate the protein content of its Products via the amino analysis described above and to provide a percent daily value figure in the Nutrition Facts panel using the PDCAAS method described above. Defendant has failed to do so, and these Products are accordingly misbranded.

44. Defendant also violated 21 C.F.R. § 101.9(h)(4) because it failed to *prominently* display “the type and quantity of the other ingredients to be added to the product by the user and the specific method of cooking and other preparation” on the front the label. For instance, the Hemp Hearts Granola states “10g PROTEIN” on the front of the package and below, in very small, barely legible font, states that it is “per serving with milk” and below that, in even smaller font, states “prepared with a ½ cup of skim milk.” This is language is not prominently featured on the label and, therefore, violates 21 C.F.R. § 101.9(h)(4).

1 45. Defendant's marketing, advertising, and sale of the Products violates the false ad-
 2 vertising provisions of the Sherman Law (California Health & Safety Code § 110390, *et. seq.*),
 3 including but not limited to:

- 4 a. Section 110390, which makes it unlawful to disseminate false or misleading food
 5 advertisements that include statements on products and product packaging or
 6 labeling or any other medium used to directly or indirectly induce the purchase of
 7 a food product;
 8 b. Section 110395, which makes it unlawful to manufacture, sell, deliver, hold or
 9 offer to sell any falsely or misleadingly advertised food; and
 10 c. Sections 110398 and 110400, which make it unlawful to advertise misbranded
 11 food or to deliver or proffer for delivery any food that has been falsely or
 12 misleadingly advertised.

13 46. Defendant's marketing, advertising, and sale of the Products violates the
 14 misbranding provisions of the Sherman Law (California Health & Safety Code § 110660, *et.*
 15 *seq.*), including but not limited to:

- 16 d. Section 110665 (a food is misbranded if its labeling does not conform with the
 17 requirements for nutrition labeling as set forth in 21 U.S.C. Sec. 343(q));
 18 e. Section 110705 (a food is misbranded if words, statements and other information
 19 required by the Sherman Law to appear food labeling is either missing or not
 20 sufficiently conspicuous);
 21 f. Section 110760, which makes it unlawful for any person to manufacture, sell,
 22 deliver, hold, or offer for sale any food that is misbranded;
 23 g. Section 110765, which makes it unlawful for any person to misbrand any food;
 24 and
 25 h. Section 110770, which makes it unlawful for any person to receive in commerce
 26 any food that is misbranded or to deliver or proffer for delivery any such food.

27 47. Defendant has violated 21 U.S.C. § 343(a), and the standards set by FDA
 28 regulations, including but not limited to 21 C.F.R. § 101.9 (c)(7), 21 C.F.R. § 101.9 (h)(4), and 21

1 C.F.R. 101.9(e)(3), which have been incorporated by reference in the Sherman Law, by failing to
 2 include and/or prominently display on the Product labels the nutritional information required by
 3 law.

4 48. A reasonable consumer would expect that the Products contain and provide what
 5 Defendant identifies them to contain and provide on the product labels and that the labels would
 6 not be contrary to the policies or regulations of the State of California and/or the FDA. For
 7 example, a reasonable consumer would expect that when Defendant labels its Products as
 8 containing “10g PROTEIN” per serving, the Products would provide 10 grams of protein per
 9 serving. However, based on amino acid content testing, Defendant’s Products contain less protein
 10 than claimed. For example, the Hemp Hearts Granola only contained 3.87 grams of protein – an
 11 overstatement of approximately 57%, and 28% even if accounting for an extra 4 grams of protein
 12 with added milk.

13 49. Moreover, based on the types of protein stated in the Products’ ingredient lists, the
 14 amount of digestible or usable protein the Products actually deliver to the human body is even
 15 lower than the amino content testing itself reveals. Defendant uses poor quality proteins, such as
 16 oat proteins, in the Products, which will result in each Product’s overall PDCAAS being far less
 17 than 1.0.

18 50. Consumers lack the meaningful ability to test or independently ascertain the truth-
 19 fulness of Defendant’s food labeling claims, especially at the point of sale. Consumers would not
 20 know the true protein content of the Products merely by looking elsewhere on the product pack-
 21 age. Its discovery requires investigation well beyond the grocery store aisle and knowledge of
 22 food chemistry beyond that of the average consumer. An average consumer does not have the
 23 specialized knowledge necessary to ascertain that a serving of a Product does not contain the
 24 number of grams of protein that is represented on the label. An average consumer also lacks the
 25 specialized knowledge necessary to determine the PDCAAS for the Products. That combined
 26 with Defendant’s active concealment in representing that the Products contain and provide spe-
 27 cific amounts of protein per serving, and not disclosing otherwise anywhere on the label, much
 28 less by listing the Protein DRV for the Products as it is required to do, gave the average reason-

1 able consumer no reason to suspect that Defendant's representations on the packages were false.
 2 Therefore, consumers had no reason to investigate whether the Products actually do contain and
 3 provide the amount of protein per serving that the labels claim they do. Thus, reasonable consum-
 4 ers relied on Defendant's representations regarding the nature of the Products.

5 51. Defendant intends and knows that consumers will and do rely upon food labeling
 6 statements in making their purchasing decisions. Label claims and other forms of advertising and
 7 marketing drive product sales, particularly if placed prominently on the front of product packag-
 8 ing, as Defendant has done with the claims on the Products that they contain and provide specific
 9 amounts of protein per serving.

10 **Defendant Misleadingly Markets Its Products to Increase Profits and Gain a Competitive**
 11 **Edge**

12 52. In making false, misleading, and deceptive representations, Defendant distin-
 13 guishes its Products from its competitors' products. Defendant knew and intended that consumers
 14 would purchase, and pay a premium for, products labeled as having more protein over compara-
 15 ble products that do not contain misleading protein representations on the product labels. By us-
 16 ing this branding and marketing strategy, Defendant is stating that its Products are superior to,
 17 better than, and more nutritious and healthful than other products that do not misrepresent the
 18 number of grams of protein on their labels or fail to prominently display the "as prepared" lan-
 19 guage on the front of the label.

20 **Defendant Intends to Continue to Market its Products as Containing More Protein than the**
 21 **Products Actually Contain**

22 53. Because consumers pay a price premium for products that contain more protein, by
 23 labeling its Products as containing more grams of protein per serving than they actually contain,
 24 Defendant is able to both increase its sales and retain more profits.

25 54. Defendant engaged in the practices complained of herein to further its private in-
 26 terests of: (i) increasing sales of its Products while decreasing the sales of competitors that do not
 27 misrepresent the number of grams of protein contained in its products, and/or (ii) commanding a
 28 higher price for its Products because consumers will pay more for these Products due to consum-
 29 ers' demand for products containing more protein.

55. The market for protein products is continuing to grow and expand, and because Defendant knows consumers rely on representations about the number of grams of protein in food products, Defendant has an incentive to continue to make such false representations. In addition, other trends suggest that Defendant has no incentive to change its labeling practices.

56. For example, one market analysis revealed that between 2013-2017, product launches with a protein claim grew 31%.⁷

57. To capitalize on the growing market, Defendant has since expanded its product line to oatmeal, waffles, granola and other snacks and has continued to replicate its misrepresentations on the new product lines. Defendant continues to launch new product lines and flavors to diversify its portfolio to maintain its competitive edge, making it likely that Defendant will continue to misleadingly advertise its Products and perpetuate the misrepresentations regarding the protein in its Products.

PLAINTIFFS' EXPERIENCES

Plaintiff Molly Brown

58. Plaintiff Molly Brown has purchased Nature's Path Hemp Hearts Granola, Pumpkin Seed + Flax Granola, and Gorilla Munch Cereal (23 oz) from various Whole Foods and Sprouts stores throughout the Bay Area, including Novato, Petaluma and San Rafael, California, on multiple occasions during the last four years.

59. Ms. Brown made each of her purchases after reading and relying on the truthfulness of Defendant's product label that promised the Products contained a specified amount of protein per serving on the front of the product package (such as "10g PROTEIN" for the Hemp Hearts Granola). But on each of the Products she purchased, Defendant misrepresented the protein content of the Products as containing more grams of protein than they actually contain, and as far more than they actually provide, when adjusted by the PDCAAS and even including the addition of milk for some of the Products.

⁷ https://www.bakeryandsnacks.com/Article/2018/11/26/10-key-snack-trends-to-watch?utm_source=copyright&utm_medium=OnSite&utm_campaign=copyright

60. At the time of each of her purchases of the Products, Ms. Brown did not know that the Products did not contain or provide the amount of protein represented on the label. As a result of Defendant's misrepresentations and omissions, the Products have no, or, at a minimum, a much lower value to Ms. Brown.

61. Ms. Brown not only purchased the Products because the labels said that they contained a specified amount of protein per serving, but she also paid more money for the Products than she would have paid for other or a similar product that was not mislabeled regarding the number of grams of protein it contained or displayed the "as prepared" language prominently.

62. Had Defendant not misrepresented (by omission and commission) the true nature of the Products, Ms. Brown would not have purchased them or, at a very minimum, she would have paid less for the Products.

63. Ms. Brown continues to desire to purchase protein products, including those marketed and sold by Defendant. If the Products were reformulated to provide the grams of protein that are represented on the labels, Ms. Brown would likely purchase them again in the future. Ms. Brown regularly visits stores where Defendant's Products and other protein products are sold. Because Ms. Brown does not know the formula for Defendant's products and cannot test whether or not the Products provide the amount of protein that is represented on the label, Ms. Brown will be unable to rely on Defendant's labels when shopping for protein products in the future absent an injunction that prohibits Defendant from labeling its products with the incorrect number of grams of protein that each serving contains. Should Defendant begin to market and sell a new line of products, Ms. Brown could be at risk for buying another one of Defendant's products in reliance on the same or similar misrepresentation.

Plaintiff Parsa Miller

64. Plaintiff Parsa Miller has purchased Nature's Path Hemp Hearts Granola, Gorilla Munch Cereal (23 oz), Love Crunch Cereal (Chocolate & Peanut Butter), Heritage Flakes Cereal, Flax Plus Multibran Flakes Cereal, Flax Plus Maple Pecan Crunch Cereal, Flax Plus Pumpkin Raisin Crunch Cereal, Flax Plus Red Berry Crunch Cereal, Coconut Chia Granola, Pumpkin + Flax Seed Granola, Apple Cinnamon Oatmeal, Blueberry Cinnamon Flax Oatmeal, Old

1 Fashioned Oats, Flax Plus Waffles, Maple Cinnamon Waffles, and Ancient Grains Waffles from
2 various grocery stores, including Safeway stores, throughout the Loomis, California area during
3 the last four years.

4 65. Mr. Miller made each of his purchases after reading and relying on the truthfulness
5 of Defendant's product label that promised the Products contained a specified amount of protein
6 per serving on the front of the product package (such as "10g PROTEIN" per serving for the
7 Hemp Hearts Granola). But on each of the Products he purchased, Defendant misrepresented the
8 protein contents of the Products as containing more grams of protein than they actually contain,
9 and as far more than they actually provide, when adjusted by the PDCAAS and even including
10 the addition of milk for some of the Products.

11 66. At the time of each of his purchases of the Products, Mr. Miller did not know that
12 the Products did not contain or provide the amount of protein represented on the label. As a result
13 of Defendant's misrepresentations and omissions, the Products have no, or, at a minimum, a
14 much lower value to him.

15 67. Mr. Miller not only purchased the Products because the labels said that they
16 contained a specified amount of protein per serving, but he also paid more money for the Products
17 than he would have paid for other or a similar product that was not mislabeled regarding the
18 number of grams of protein it contained or displayed the "as prepared" language prominently.

19 68. Had Defendant not misrepresented (by omission and commission) the true nature
20 of the Products, Mr. Miller would not have purchased them or, at a very minimum, he would have
21 paid less for the Products.

22 69. Mr. Miller continues to desire to purchase protein products, including those
23 marketed and sold by Defendant. If the Products were reformulated to provide the grams of
24 protein that are represented on the labels, Mr. Miller would likely purchase them again in the
25 future. Mr. Miller regularly visits stores where Defendant's Products and other protein products
26 are sold. Because Mr. Miller does not know the formula for Defendant's products and cannot test
27 whether or not the Products provide the amount of protein that is represented on the label, Mr.
28 Miller will be unable to rely on Defendant's labels when shopping for protein products in the

1 future absent an injunction that prohibits Defendant from labeling its products with the incorrect
 2 number of grams of protein that each serving contains. Should Defendant begin to market and sell
 3 a new line of products, Mr. Miller could be at risk for buying another one of Defendant's products
 4 in reliance on the same or similar misrepresentation.

5 **Plaintiff Lauren Morgan**

6 70. Plaintiff Lauren Morgan has purchased Nature's Path Hemp Hearts Granola,
 7 Apple Cinnamon Oatmeal, and Pumpkin + Flax Seed Granola from Walmart and/or Target retail
 8 stores throughout the Huntington Beach, California area during the last three years.

9 71. Ms. Morgan made each of her purchases after reading and relying on the
 10 truthfulness of Defendant's product label that promised the Products contained a specified
 11 amount of protein per serving on the front of the product package (such as "10g PROTEIN" per
 12 serving for the Hemp Hearts Granola). But on each of the Products she purchased, Defendant
 13 misrepresented the protein contents of the Products as containing more grams of protein than they
 14 actually contain, and as far more than they actually provide, when adjusted by the PDCAAS, and
 15 even including the addition of milk for some of the Products.

16 72. At the time of each of her purchases of the Products, Ms. Morgan did not know
 17 that the Products did not contain or provide the amount of protein represented on the label. As a
 18 result of Defendant's misrepresentations and omissions, the Products have no, or, at a minimum,
 19 a much lower value to her.

20 73. Ms. Morgan not only purchased the Products because the labels said that they
 21 contained a specified amount of protein per serving, but she also paid more money for the
 22 Products than she would have paid for other or a similar product that was not mislabeled
 23 regarding the number of grams of protein it contained or displayed the "as prepared" language
 24 prominently.

25 74. Had Defendant not misrepresented (by omission and commission) the true nature
 26 of the Products, Ms. Morgan would not have purchased them or, at a very minimum, she would
 27 have paid less for the Products.

28 75. Ms. Morgan continues to desire to purchase protein products, including those

1 marketed and sold by Defendant. If the Products were reformulated to provide the grams of
 2 protein that are represented on the labels, Ms. Morgan would likely purchase them again in the
 3 future. Ms. Morgan regularly visits stores where Defendant's Products and other protein products
 4 are sold. Because Ms. Morgan does not know the formula for Defendant's products and cannot
 5 test whether or not the Products provide the amount of protein that is represented on the label,
 6 Ms. Morgan will be unable to rely on Defendant's labels when shopping for protein products in
 7 the future absent an injunction that prohibits Defendant from labeling its products with the
 8 incorrect number of grams of protein that each serving contains. Should Defendant begin to
 9 market and sell a new line of products, Ms. Morgan could be at risk for buying another one of
 10 Defendant's products in reliance on the same or similar misrepresentation.

11 76. Plaintiffs and members of the Class have been economically damaged by their
 12 purchase of the Products because the advertising for the Products was and is untrue and/or
 13 misleading under California law and the products are misbranded; therefore, the Products are
 14 worth less than what Plaintiffs and members of the Class paid for them and/or Plaintiffs and
 15 members of the Class did not receive what they reasonably intended to receive.

16 **CLASS ALLEGATIONS**

17 77. Plaintiffs bring this class action lawsuit on behalf of themselves and proposed
 18 classes of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of
 19 Civil Procedure. Plaintiffs seek to represent the following groups of similarly situated persons,
 20 defined as follows:

21 The Class: All persons in the State of California who purchased the Products between
 22 July 2, 2017 and the present.

23 The Subclass: All Class Members who purchased Products that make protein claims on
 24 the front of the package based on "as prepared" nutrition information.

25 78. This action has been brought and may properly be maintained as a class action
 26 against Defendant because there is a well-defined community of interest in the litigation and the
 27 proposed class is easily ascertainable.

28 79. Numerosity: Plaintiffs do not know the exact size the Class and Subclass, but they
 estimate that it is composed of more than 100 persons. The persons in the Class and Subclass are

1 so numerous that the joinder of all such persons is impracticable and the disposition of their
 2 claims in a class action rather than in individual actions will benefit the parties and the courts.

3 80. Common Questions Predominate: This action involves common questions of law
 4 and fact to the potential classes because each class member's claim derives from the deceptive,
 5 unlawful and/or unfair statements and omissions that led consumers to believe that the Products
 6 contained the amount of protein as represented on the Product labels. The common questions of
 7 law and fact predominate over individual questions, as proof of a common or single set of facts
 8 will establish the right of each member of the Class and Subclass to recover. The questions of law
 9 and fact common to the Class and Subclass are:

- 10 a. The true nature of the protein content in the Products;
- 11 b. Whether the marketing, advertising, packaging, labeling, and other promotional
- 12 materials for the Products are deceptive and/or unlawful because of
- 13 misrepresentations;
- 14 c. Whether Defendant's actions violate Federal and California laws invoked herein;
- 15 d. Whether labeling the Products as containing more grams of protein than they
- 16 actually contain causes the Products to command a price premium in the market as
- 17 compared with similar products that do not make such misrepresentations;
- 18 e. Whether Defendant's advertising and marketing regarding the Products sold to the
- 19 Class and Subclass members was likely to deceive reasonable consumers;
- 20 f. Whether representations regarding the number of grams of protein in the Products
- 21 are material to a reasonable consumer;
- 22 g. Whether Defendant engaged in the behavior knowingly, recklessly, or negligently;
- 23 h. The amount of profits and revenues earned by Defendant as a result of the
- 24 conduct;
- 25 i. Whether Class and Subclass members are entitled to restitution, injunctive and
- 26 other equitable relief and, if so, what is the nature (and amount) of such relief; and
- 27 j. Whether Class and Subclass members are entitled to payment of actual, incidental,
- 28 consequential, exemplary and/or statutory damages plus interest thereon, and if so,

1 what is the nature of such relief.

2 81. Typicality: Plaintiffs' claims are typical of the claims of the other members of the
3 Class and Subclass because, among other things, all such claims arise out of the same wrongful
4 course of conduct engaged in by Defendant in violation of law as complained of herein. Further,
5 the damages of each member of the Class and Subclass were caused directly by Defendant's
6 wrongful conduct in violation of the law as alleged herein.

7 82. Adequacy of Representation: Plaintiffs will fairly and adequately protect the
8 interests of all Class and Subclass members because it is in their best interests to prosecute the
9 claims alleged herein to obtain full compensation due to them for the unfair and illegal conduct of
10 which they complain. Plaintiffs also have no interests that are in conflict with, or antagonistic to,
11 the interests of Class and Subclass members. Plaintiffs have retained highly competent and
12 experienced class action attorneys to represent their interests and that of the Class and Subclass.
13 By prevailing on their own claims, Plaintiffs will establish Defendant's liability to all Class and
14 Subclass members. Plaintiffs and their counsel have the necessary financial resources to
15 adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their
16 fiduciary responsibilities to the Class and Subclass members and are determined to diligently
17 discharge those duties by vigorously seeking the maximum possible recovery for Class and
18 Subclass members.

19 83. Superiority: There is no plain, speedy, or adequate remedy other than by
20 maintenance of this class action. The prosecution of individual remedies by members of the
21 classes will tend to establish inconsistent standards of conduct for Defendant and result in the
22 impairment of Class and Subclass members' rights and the disposition of their interests through
23 actions to which they were not parties. Class action treatment will permit a large number of
24 similarly situated persons to prosecute their common claims in a single forum simultaneously,
25 efficiently, and without the unnecessary duplication of effort and expense that numerous
26 individual actions would engender. Furthermore, as the damages suffered by each individual
27 member of the classes may be relatively small, the expenses and burden of individual litigation
28 would make it difficult or impossible for individual members of the classes to redress the wrongs

1 done to them, while an important public interest will be served by addressing the matter as a class
2 action.

3 84. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
4 management of this action that would preclude its maintenance as a class action.

5 **CAUSES OF ACTION**

6 Plaintiffs do not plead, and hereby disclaim, causes of action under the FDCA and
7 regulations promulgated thereunder by the FDA. Plaintiffs rely on the FDCA and FDA
8 regulations only to the extent such laws and regulations have been separately enacted as state law
9 or regulation or provide a predicate basis of liability under the state and common laws cited in the
10 following causes of action.

11 **PLAINTIFFS' FIRST CAUSE OF ACTION**

12 **(Violation of the Consumers Legal Remedies Act (the "CLRA"), California Civil Code §
13 1750, *et seq.*)**

14 **On Behalf of Plaintiffs, the Class, and the Subclass**

15 85. Plaintiffs reallege and incorporate the paragraphs of this Class Action Complaint
16 as if set forth herein.

17 86. Defendant's actions, representations and conduct have violated, and continue to
18 violate the CLRA, because they extend to transactions that are intended to result, or which have
19 resulted, in the sale or lease of goods or services to consumers.

20 87. Plaintiffs and other Class and Subclass members are "consumers" as that term is
21 defined by the CLRA in California Civil Code § 1761(d).

22 88. The Products that Plaintiffs (and other similarly situated Class and Subclass
23 members) purchased from Defendant were "goods" within the meaning of California Civil Code
24 § 1761(a).

25 89. Defendant's acts and practices, set forth in this Class Action Complaint, led
26 customers to falsely believe that the Products contained and provided the amount of protein
27 claimed on the product package. By engaging in the actions, representations and conduct set forth
28 in this Class Action Complaint, Defendant has violated, and continue to violate, § 1770(a)(2), §
1770(a)(5), § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California

1 Civil Code §1770(a)(2), Defendant's acts and practices constitute improper representations
 2 regarding the source, sponsorship, approval, or certification of the goods they sold. In violation of
 3 California Civil Code §1770(a)(5), Defendant's acts and practices constitute improper
 4 representations that the goods they sell have sponsorship, approval, characteristics, ingredients,
 5 uses, benefits, or quantities, which they do not have. In violation of California Civil Code
 6 §1770(a)(7), Defendant's acts and practices constitute improper representations that the goods it
 7 sells are of a particular standard, quality, or grade, when they are of another. In violation of
 8 California Civil Code §1770(a)(8), Defendant has disparaged the goods, services, or business of
 9 another by false or misleading representation of fact. In violation of California Civil Code
 10 §1770(a)(9), Defendant has advertised goods or services with intent not to sell them as advertised.
 11 Finally, regarding California Civil Code §1770(a)(8), Defendant falsely or deceptively markets
 12 and advertises that, unlike other protein product manufacturers, it sells Products that contain more
 13 grams of protein than the Products actually contain. Further, Defendant failed to list the DRV of
 14 protein on its Products, as it was required to do.

15 90. Plaintiffs request that this Court enjoin Defendant from continuing to employ the
 16 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
 17 § 1780(a)(2). If Defendant is not restrained from engaging in these types of practices in the
 18 future, Plaintiffs and the other members of the Class and Subclass will continue to suffer harm.
 19 Plaintiffs and those similarly situated have no adequate remedy at law to stop Defendant's
 20 continuing practices.

21 91. Plaintiffs provided Defendant with notice and demand that Defendant correct,
 22 repair, replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices
 23 complained of herein. Despite receiving the aforementioned notice and demand, Defendant failed
 24 to do so in that, among other things, it failed to identify similarly situated customers, notify them
 25 of their right to correction, repair, replacement or other remedy, and/or to provide that remedy.
 26 Accordingly, Plaintiffs seek, pursuant to California Civil Code § 1780(a)(3), on behalf of
 27 themselves and those similarly situated Class and Subclass members, compensatory damages,
 28 punitive damages and restitution of any ill-gotten gains due to Defendant's acts and practices.

1 92. Plaintiffs also request that this Court award their costs and reasonable attorneys'
2 fees pursuant to California Civil Code § 1780(d).

3 **PLAINTIFFS' SECOND CAUSE OF ACTION**
4 **(False Advertising, Business and Professions Code § 17500, *et seq.* ("FAL"))**
5 **On Behalf of Plaintiffs, the Class, and the Subclass**

6 93. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
7 Complaint as if set forth herein.

8 94. Beginning at an exact date unknown to Plaintiffs, but within three (3) years
9 preceding the filing of the Class Action Complaint, Defendant made untrue, false, deceptive
10 and/or misleading statements in connection with the advertising and marketing of the Products.

11 95. Defendant made representations and statements (by omission and commission)
12 that led reasonable customers to believe that the Products that they were purchasing contained
13 more grams of protein per serving than the Products actually contained or provided. Further,
14 Defendant failed to list the DRV of protein on its Products, as it was required to do.

15 96. Plaintiffs and those similarly situated relied to their detriment on Defendant's
16 false, misleading and deceptive advertising and marketing practices, including each of the
17 misrepresentations and omissions set forth above. Had Plaintiffs and those similarly situated been
18 adequately informed and not intentionally deceived by Defendant, they would have acted
19 differently by, without limitation, refraining from purchasing Defendant's Products or paying less
20 for them.

21 97. Defendant's acts and omissions are likely to deceive the general public.

22 98. Defendant engaged in these false, misleading and deceptive advertising and
23 marketing practices to increase its profits. Accordingly, Defendant has engaged in false
24 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and
25 Professions Code.

26 99. The aforementioned practices, which Defendant used, and continues to use, to its
27 significant financial gain, also constitute unlawful competition and provide an unlawful
28 advantage over Defendant's competitors as well as injury to the general public.

100. As a direct and proximate result of such actions, Plaintiffs and the other Class and

1 Subclass members have suffered, and continue to suffer, injury in fact and have lost money and/or
 2 property as a result of such false, deceptive and misleading advertising in an amount which will
 3 be proven at trial, but which is in excess of the jurisdictional minimum of this Court.

4 101. Plaintiffs seek, on behalf of themselves and those similarly situated, full restitution
 5 of monies, as necessary and according to proof, to restore any and all monies acquired by
 6 Defendant from Plaintiffs, the general public, or those similarly situated by means of the false,
 7 misleading and deceptive advertising and marketing practices complained of herein, plus interest
 8 thereon. Plaintiffs and those similarly situated lack any adequate remedy at law to obtain this
 9 restitution.

10 102. Plaintiffs seek, on behalf of themselves and those similarly situated, a declaration
 11 that the above-described practices constitute false, misleading and deceptive advertising.

12 103. Plaintiffs seek, on behalf of themselves and those similarly situated, an injunction
 13 to prohibit Defendant from continuing to engage in the false, misleading and deceptive
 14 advertising and marketing practices complained of herein. Such misconduct by Defendant, unless
 15 and until enjoined and restrained by order of this Court, will continue to cause injury in fact to the
 16 general public and the loss of money and property in that Defendant will continue to violate the
 17 laws of California, unless specifically ordered to comply with the same. This expectation of
 18 future violations will require current and future consumers to repeatedly and continuously seek
 19 legal redress in order to recover monies paid to Defendant to which it is not entitled. Plaintiff,
 20 those similarly situated and/or other consumers nationwide have no other adequate remedy at law
 21 to ensure future compliance with the California Business and Professions Code alleged to have
 22 been violated herein.

23 **PLAINTIFFS' THIRD CAUSE OF ACTION**
 24 **(Common Law Fraud, Deceit and/or Misrepresentation)**
 25 **On Behalf of Plaintiffs, the Class, and the Subclass**

26 104. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
 27 Complaint as if set forth herein.

28 105. Defendant has fraudulently and deceptively informed Plaintiffs that the Products
 contain more grams of protein than they actually contain or provide. Further, Defendant failed to

1 list the DRV of protein on all its Products, as it was required to do. Also, as to some of the
2 Products, Defendant failed to display “the type and quantity of the other ingredients to be added
3 to the product by the user and the specific method of cooking and other preparation” prominently
4 on the front the label, as it was required to do.

5 106. These misrepresentations and omissions were known exclusively to, and actively
6 concealed by, Defendant, not reasonably known to Plaintiff, and material at the time they were
7 made. Defendant knew or should have known the composition of the Products, and knew or
8 should have known that the Products did not contain or provide the amount of protein represented
9 on the label. Defendant’s misrepresentations and omissions concerned material facts that were
10 essential to the analysis undertaken by Plaintiffs as to whether to purchase Defendant’s Products.
11 In misleading Plaintiffs and not so informing Plaintiffs, Defendant breached its duty to them.
12 Defendant also gained financially from, and as a result of, its breach.

13 107. Plaintiffs and those similarly situated relied to their detriment on Defendant’s
14 misrepresentations and fraudulent omissions. Had Plaintiffs and those similarly situated been
15 adequately informed and not intentionally deceived by Defendant, they would have acted
16 differently by, without limitation: (i) declining to purchase the Products, (ii) purchasing less of
17 them, or (iii) paying less for the Products.

18 108. By and through such fraud, deceit, misrepresentations and/or omissions, Defendant
19 intended to induce Plaintiffs and those similarly situated to alter their position to their detriment.
20 Specifically, Defendant fraudulently and deceptively induced Plaintiffs and those similarly
21 situated to, without limitation, purchase the Products.

22 109. Plaintiffs and those similarly situated justifiably and reasonably relied on
23 Defendant’s misrepresentations and omissions, and, accordingly, were damaged by Defendant.

24 110. As a direct and proximate result of Defendant’s misrepresentations and/or
25 omissions, Plaintiffs and those similarly situated have suffered damages, including, without
26 limitation, the amount they paid for the Products.

27 111. Defendant’s conduct as described herein was wilful and malicious and was
28 designed to maximize Defendant’s profits even though Defendant knew that it would cause loss

1 and harm to Plaintiffs and those similarly situated.

2 **PLAINTIFFS' FOURTH CAUSE OF ACTION**
 3 **(Unlawful, unfair, and fraudulent trade practices violation of Business and Professions**
 4 **Code § 17200, *et seq.*)**
 5 **On Behalf of Plaintiffs, the Class, and the Subclass**

6 112. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
 7 Complaint as if set forth herein.

8 113. Within four (4) years preceding the filing of this lawsuit, and at all times
 9 mentioned herein, Defendant has engaged, and continue to engage, in unlawful, unfair, and
 10 fraudulent trade practices in California by engaging in the unlawful, unfair, and fraudulent
 11 business practices outlined in this complaint.

12 114. In particular, Defendant has engaged, and continue to engage, in unlawful
 13 practices by, without limitation, violating the following state and federal laws: (i) the CLRA as
 14 described herein; (ii) the FAL as described herein; (iii) the advertising provisions of the Sherman
 15 Law (Article 3), including without limitation, California Health & Safety Code §§ 110390,
 16 110395, 110398 and 110400; (iv) the misbranded food provisions of the Sherman Law (Article
 17 6), including without limitation, California Health & Safety Code §§ 110660, 110665, 110705,
 18 110760, 110765, and 110770; and (v) and federal laws regulating the advertising and branding of
 19 food in 21 U.S.C. § 343(a), *et seq.* and FDA regulations, including but not limited to 21 C.F.R. 21
 20 C.F.R. § 101.9 (c)(7), 101.9(h)(4), and 101.9(e)(3), which are incorporated into the Sherman Law
 21 (California Health & Safety Code §§ 110100(a), 110380, and 110505).

22 115. In particular, Defendant has engaged, and continues to engage, in unfair and
 23 fraudulent practices by, without limitation, the following: (i) misrepresenting that the Products
 24 contain and provide more grams of protein than they actually contain or provide; and (ii) failing
 25 to list the Protein DRV as required by FDA regulations; and (iii) failing to prominently display
 26 the type and quantity of the ingredients to be added to the product by the user and the specific
 27 method of cooking on the front the label.

28 116. Plaintiffs and those similarly situated relied to their detriment on Defendant's
 unlawful, unfair, and fraudulent business practices. Had Plaintiffs and those similarly situated

1 been adequately informed and not deceived by Defendant, they would have acted differently by,
2 without limitation: (i) declining to purchase the Products, (ii) purchasing less of the Products, or
3 (iii) paying less for the Products.

4 117. Defendant's acts and omissions are likely to deceive the general public.

5 118. Defendant engaged in these deceptive and unlawful practices to increase its
6 profits. Accordingly, Defendant has engaged in unlawful trade practices, as defined and
7 prohibited by section 17200, *et seq.* of the California Business and Professions Code.

8 119. The aforementioned practices, which Defendant has used to its significant
9 financial gain, also constitute unlawful competition and provide an unlawful advantage over
10 Defendant's competitors as well as injury to the general public.

11 120. As a direct and proximate result of such actions, Plaintiffs and the other Class and
12 Subclass members, have suffered and continue to suffer injury in fact and have lost money and/or
13 property as a result of such deceptive and/or unlawful trade practices and unfair competition in an
14 amount which will be proven at trial, but which is in excess of the jurisdictional minimum of this
15 Court. Among other things, Plaintiffs, Class members, and the Subclass members lost the amount
16 they paid for the Products.

17 121. As a direct and proximate result of such actions, Defendant has enjoyed, and
18 continues to enjoy, significant financial gain in an amount which will be proven at trial, but which
19 is in excess of the jurisdictional minimum of this Court.

20 122. Plaintiffs seek, on behalf of themselves and those similarly situated, full restitution
21 of monies, as necessary and according to proof, to restore any and all monies acquired by
22 Defendant from Plaintiffs, the general public, or those similarly situated by means of the
23 deceptive and/or unlawful trade practices complained of herein, plus interest thereon. Plaintiffs
24 and those similarly situated lack any adequate remedy at law to obtain this restitution.

25 123. Plaintiffs seek, on behalf of those similarly situated, a declaration that the above-
26 described trade practices are fraudulent, unfair, and/or unlawful.

27 124. Plaintiffs seek, on behalf of those similarly situated, an injunction to prohibit
28 Defendant from continuing to engage in the deceptive and/or unlawful trade practices complained

of herein. Such misconduct by Defendant, unless and until enjoined and restrained by order of this Court, will continue to cause injury in fact to the general public and the loss of money and property in that Defendant will continue to violate the laws of California, unless specifically ordered to comply with the same. This expectation of future violations will require current and future consumers to repeatedly and continuously seek legal redress in order to recover monies paid to Defendant to which they were not entitled. Plaintiffs, those similarly situated and/or other consumers nationwide have no other adequate remedy at law to ensure future compliance with the California Business and Professions Code alleged to have been violated herein.

PLAINTIFFS' FIFTH CAUSE OF ACTION

(Unjust Enrichment)

On Behalf of Plaintiffs, the Class, and the Subclass

125. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein

126. Plaintiffs and members of the Class and the Subclass conferred a benefit on the Defendant by purchasing the Products

127. Defendant has been unjustly enriched in retaining the revenues from Plaintiffs' and Class and Subclass members' purchases of the Products, which retention is unjust and inequitable, because Defendant falsely represented that the Products contained and provided specific amounts of protein per serving, when, in fact, the Products contained less protein than represented, and provided even less. This harmed Plaintiff, Class members, and Subclass members because they paid a price premium as a result.

128. Because Defendant's retention of the non-gratuitous benefit conferred on it by Plaintiffs and Class and Subclass members is unjust and inequitable, Defendant must pay restitution to Plaintiffs and the Class and Subclass members for its unjust enrichment, as ordered by the Court. Plaintiffs and those similarly situated have no adequate remedy at law to obtain this restitution.

129. Plaintiffs, therefore, seeks an order requiring Defendant to make restitution to them and other members of the Class and Subclass.

PRAYER FOR RELIEF

1 **WHEREFORE**, Plaintiffs, on behalf of themselves and those similarly situated,
2 respectfully request that the Court enter judgement against Defendant as follows:

- 3 A. Certification of the proposed Class and Subclass, including appointment of
4 Plaintiffs' counsel as class counsel;
- 5 B. An order temporarily and permanently enjoining Defendant from continuing the
6 unlawful, deceptive, fraudulent, and unfair business practices alleged in this Com-
7 plaint;
- 8 C. An award of compensatory damages in an amount to be determined at trial, except
9 for those causes of action where compensatory damages are not legally available;
- 10 D. An award of statutory damages in an amount to be determined at trial, except for
11 those causes of action where statutory damages are not legally available;
- 12 E. An award of punitive damages in an amount to be determined at trial, except for
13 those causes of action where punitive damages are not legally available;
- 14 F. An award of treble damages, except for those causes of action where treble
15 damages are not legally available;
- 16 G. An award of restitution in an amount to be determined at trial;
- 17 H. An order requiring Defendant to pay both pre- and post-judgment interest on any
18 amounts awarded;
- 19 I. For reasonable attorneys' fees and the costs of suit incurred; and
- 20 J. For such further relief as this Court may deem just and proper.

21 **JURY TRIAL DEMANDED**

22 Plaintiffs hereby demand a trial by jury.

23 Dated: July 2, 2021

24 **GUTRIDE SAFIER LLP**

25 /s/Seth A. Safier/s/

26 Seth A. Safier, Esq.
27 Marie McCrary, Esq.
28 Hayley Reynolds, Esq.
 100 Pine Street, Suite 1250
 San Francisco, CA 94111

EXHIBIT A

I, Molly Brown, declare:

1. I am a plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2215.5 and California Civil Code section 1780(d).

3. As set forth in my complaint, I purchased the Nature's Path Hemp Hearts Granola, Pumpkin Seed + Flax Granola, and Gorilla Munch Cereal (23 oz) from various Whole Foods and Sprouts stores throughout the Bay Area, including Novato, Petaluma and San Rafael, California, during the Class Period.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this 24th day of June 2021, in Novato, California.

DocuSigned by:

Molly Brown

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Molly Brown

Product Type	Variety	Protein Claim on the Front Label
Cereal		
Envirokids	Chocolate Koala Crisp (25.6 oz)	3g
Envirokids	Gorilla Munch Corn Puffs (23 oz)	3g
Envirokids	Peanut Butter Panda Puffs (24.7 oz)	3g
Envirokids	Strawberry Chocolate Turtle Splash	4g
Flax Plus	Maple Pecan Crunch	6g
Flax Plus	Multibran Flakes	5g
Flax Plus	Pumpkin Raisin Crunch	6g
Flax Plus	Raisin Bran	6g
Flax Plus	Red Berry Crunch	6g
Heritage	Original Crunch	6g
Heritage	Original Flakes (13.25 oz)	5g
Heritage	Original Flakes (32 oz)	5g
Heritage	Original O's (32 oz)	4g
Love Crunch	Dark Chocolate and Peanut Butter	8g
Mesa Sunrise	Original (10.6 oz)	4g
Multigrain	Oat Bran Flakes (32 oz)	3g
Optimum Power	Blueberry Cinnamon Flax	9g
Qi'a	Cocoa Coconut Superflakes	6g
Qi'a	Cranberry Vanilla Chia, Buckwheat & Hemp	6g
Qi'a	Original Chia, Buckwheat & Hemp	6g
Smart Bran	Original	4g
Granola		
Granola	Hemp Hearts	10g per serving with milk
Granola	Pumpkin Seed + Flax	10g per serving with milk
Granola	Coconut Chia	9g per serving with milk
Granola	Vanilla Almond & Flax	10g per serving with milk
Grain Free Granola	Caramel Pecan	6g
Grain Free Granola	Maple Almond	6g
Grain Free Granola	Vanilla Poppy Seed	6g

Product Type	Variety	Protein Claim on the Front Label
Oatmeal		
Coarsely Cut Whole Grain Oats	Steel Cut	5g
Gluten Free	Steel Cut	5g
Gluten Free Oatmeal	Brown Sugar Maple	4g
Gluten Free Oatmeal	Homestyle	6g
Gluten Free Whole Grain Rolled Oats	Old Fashioned	5g
Grain Free Hot Cereal	Cinnamon Apple Crisp	9g
Grain Free Hot Cereal	Maple Almond Crunch	9g
Instant Oatmeal	Apple Cinnamon	5g
Instant Oatmeal	Blueberry Cinnamon Flax	5g
Instant Oatmeal	Flax Plus	6g
Instant Oatmeal	Maple Nut	5g
Instant Oatmeal	Spiced Apple + Flax	4g
Oatmeal Cup	Coconut Cashew	7g
Oatmeal Cup	Maple Pecan	7g
Oatmeal Cup	Summer Berries Boost	7g
Old Fashioned Oats	Old Fashioned	5g
Quick Cook	Instant Oats	5g
Quick Cook	Steel Cut	5g
Waffles		
Envirokids	Cinnamon Penguin Party	5g
Envirokids	Pink Blueberry Polar Beary	5g
Nature's Path Organic	Flax Plus	4g
Nature's Path Organic	Maple Cinnamon	4g
Nature's Path Organic	Ancient Grains	4g